IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

Civil Action No.: 5:14-cv-134-BO

KEYETTE GILLAM, Plaintiff, v. LABORATORY CORPORATION OF AMERICA HOLDINGS and LABORATORY CORPORATION OF AMERICA, Defendants.	)	**DEFENDANTS' ANSWER TO PLAINTIFF'S COMPLAINT**

Defendants Laboratory Corporation of America Holdings and Laboratory Corporation of America[1] ("Defendants" or "LabCorp") respond to Plaintiff's allegations as follows:

JURISDICTION, PARTIES, AND VENUE[2]

1. Defendants admit that this Court has subject matter jurisdiction pursuant to 28 U.S.C. §1331. Except as expressly admitted herein, Defendants deny the allegations contained in paragraph 1 of the Complaint.

2. Defendants admit, upon information and belief, that Plaintiff resides in Fayetteville, Cumberland County, North Carolina. Defendants admit that Plaintiff, Keyette Gillam, is African-American. Defendants admit that Plaintiff was employed by Defendant Laboratory Corporation of America Holdings from February 8, 2010 to July 26, 2013. Except as expressly admitted herein, Defendants deny the allegations contained in paragraph 2 of the Complaint.

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[1] Defendant Laboratory Corporation of America is incorrectly named as a defendant in this action. The corporate entity that employed Plaintiff is Defendant Laboratory Corporation of America Holdings.

[2] For ease of organization and reference only, Defendants repeat the headings used by Plaintiff in her Complaint, but Defendants deny any allegations or characterizations supplied by these headings.

3. Defendants admit that Defendant Laboratory Corporation of America Holdings is a Delaware corporation with its principal place of business located in Burlington, North Carolina. Defendants admit that its registered agent for service of process is Corporation Service Company, 327 Hillsborough Street, Raleigh, North Carolina 27603-1725. Defendants admit that from February 8, 2010 through July 26, 2013 Defendant Laboratory Corporation of America Holdings employed Plaintiff and, during such time, was Plaintiff's "employer" within the meaning of 42 U.S.C. §2000e. Except as expressly admitted herein, Defendants deny the allegations contained in paragraph 3 of the Complaint.

4. Defendants admit that Laboratory Corporation of America is a Delaware corporation with its principal place of business located in Burlington, North Carolina 27215-5848. Defendants admit that its registered agent for service of process is Corporation Service Company, 327 Hillsborough Street, Raleigh, North Carolina 27603-1725. Except as expressly admitted herein, Defendants deny the allegations contained in paragraph 4 of the Complaint.

5. Defendants admit that it is engaged in an industry that affects commerce and that Defendants employ more than fifteen employees. Except as expressly admitted herein, Defendants deny the allegations contained in paragraph 5 of the Complaint.

6. Defendants admit that venue is proper in this Court. Except as expressly admitted herein, Defendants deny the allegations contained in paragraph 6 of the Complaint.

ALLEGED VICARIOUS LIABILITY – RESPONDEAT SUPERIOR

7. The allegations contained in paragraph 7 of the Complaint consist of legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

8. Defendants admit that Plaintiff filed the first of three charges of discrimination (Charge No. 433-2012-02636, hereinafter referred to as the "Charge") with the Equal Employment Opportunity Commission ("EEOC") on or about August 13, 2012. Defendants admit that Plaintiff, in the Charge, asserted a claim for race discrimination in violation of Title VII of the Civil Rights Act of 1964. Except as expressly admitted herein, Defendants deny the allegations contained in paragraph 8 of the Complaint.

9. Defendants admit that the EEOC issued a Dismissal and Notice of Rights dated December 5, 2012 with respect to the Charge. Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations pertaining to the date upon which Plaintiff received the Dismissal and Notice of Rights; consequently, those allegations are denied. Except as expressly admitted herein, Defendants deny the allegations contained in paragraph 9 of the Complaint.

FACTUAL BACKGROUND

10. Defendants admit that Plaintiff was hired by Defendant Laboratory Corporation of America Holdings on February 8, 2010 as a phlebotomist. Defendants admit that Plaintiff received written reviews with respect to her performance as a phlebotomist, and that the reviews are written documents which speak for themselves. Except as expressly admitted herein, Defendants deny the allegations contained in paragraph 10 of the Complaint.

11. Defendants deny the allegations contained in paragraph 11 of the Complaint.

12. Defendants are unaware of any complaints lodged against Phlebotomy Supervisor Jeaninne Reyes by Cape Center Internal Medicine ("Cape Center") employees or staff; consequently, those allegations, as well as all other allegations contained in paragraph 12 of the Complaint, are denied.

13. Defendants admit that on May 21, 2012, Plaintiff was informed at the end of her shift that she would be transferred from Cape Center to LabCorp's client site Highland OB/GYN Clinic, PA ("Highland OB"). Except as expressly admitted herein, Defendants deny the allegations contained in Paragraph 13 of the Complaint.

14. Defendants admit Plaintiff began working at Highland OB on May 22, 2012. Except as expressly admitted herein, Defendants deny the allegations contained in Paragraph 14 of the Complaint.

15. Defendants admit that Plaintiff contacted Senior Human Resources Consultant Kurt Scharfenberg on or about May 22, 2012. Defendants admit that LabCorp received a letter pertaining to Plaintiff from the office manager of Cape Center and Dr. Praven Patel, a physician at Cape Center, and that the letter is a written document which speaks for itself. Defendants admit that Plaintiff discussed her transfer from Cape Center to Highland OB with Senior Human Resources Consultant Christine Caserta and Human Resources Manager Cawana Herndon-Mitchell on numerous occasions. Except as expressly admitted herein, Defendants deny the allegations contained in paragraph 15 of the Complaint.

16. Defendants admit that on or about May 30, 2012 Plaintiff was transferred from Highland OB to LabCorp's Keystone Patient Service Center ("Keystone PSC") after Highland OB requested that Plaintiff be removed from their facility. Defendants admit that Plaintiff was temporarily assigned to Keystone PSC for a few days until a permanent placement was found for Plaintiff at LabCorp's client site Physicians Urgent Care. Except as expressly admitted herein, Defendants deny the allegations contained in paragraph 16 of the Complaint.

17. Defendants admit that Plaintiff began working for Physicians Urgent Care on or about June 5, 2012. Defendants admit that Plaintiff was transferred from Physicians Urgent Care to Keystone PSC after Physicians Urgent Care requested that Plaintiff be removed from their

facility. Except as expressly admitted herein, Defendants deny the allegations contained in paragraph 17 of the Complaint.

18. Defendants admit that on July 3, 2012, Plaintiff sent an email to numerous individuals at LabCorp and that the email is a written document which speaks for itself. Except as expressly admitted herein, Defendants deny the allegations contained in paragraph 18 of the Complaint.

19. Defendants deny the allegations contained in paragraph 19 of the Complaint.

20. Defendants admit that on July 7, 2012, Ms. Herndon-Mitchell and Ms. Reyes met with the Plaintiff at Keystone PSC and that Plaintiff was issued a verbal warning for her unprofessional conduct and repeated violations of LabCorp policies and procedures which had occurred between May and June 2012. Except as expressly admitted herein, Defendants deny the allegations contained in paragraph 20 of the Complaint.

21. Defendants admit that Dantonie ("Tony") Melvin was hired on July 2, 2012 as the phlebotomy supervisor for LabCorp's Keystone PSC and approximately twenty physician client-sites in the Fayetteville, Vass, Clinton, and Carthage areas. Defendants admit that Plaintiff began reporting to Mr. Melvin on or about July 20, 2012. Defendants further admit that Mr. Melvin is married to a Caucasian woman. Except as expressly admitted herein, Defendants deny the allegations contained in Paragraph 21 of the Complaint.

22. Defendants deny the allegations contained in Paragraph 22 of the complaint.

23. Defendants deny the allegations contained in Paragraph 23 of the Complaint.

24. Defendants admit that Plaintiff underwent urine drug screen training on September 14, 2012. Defendants admit that it provides urine drug screen training to phlebotomists in accordance with applicable laws and regulations. Except as expressly admitted herein, Defendants deny the allegations contained in paragraph 24 of the Complaint.

25. Defendants admit that on January 15, 2013, Phlebotomy Regional Manager Patricia Dougherty and Mr. Melvin met with Plaintiff to review specimen processing errors that Plaintiff had committed, and that Plaintiff was asked to sign an acknowledgment form ("PST Error Acknowledgment") pertaining to these errors. Defendants admit that, on numerous occasions, Plaintiff would take notes during meetings with her supervisors and/or human resources personnel. Defendants admit that during the meeting on January 15, 2013, Plaintiff pulled out a tape recording device and, in response, Ms. Dougherty told Plaintiff that she was not allowed to record their conversation because it violated LabCorp policy. Except as expressly admitted herein, Defendants deny the allegations in paragraph 25 of the Complaint.

26. Defendants admit that Plaintiff was issued a written warning on January 17, 2013 for insubordination and violation of LabCorp's policy pertaining to the unauthorized use of recording devices. Except as expressly admitted herein, Defendants deny the allegations contained in paragraph 26 of the Complaint.

27. Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 27 of the Complaint; consequently, those allegations are denied.

28. Defendants are without knowledge or information sufficient to form a belief about the truth of the first two sentences contained in paragraph 28 of the Complaint; consequently, those allegations are denied. Except as expressly admitted herein, Defendants deny the allegations contained in paragraph 28 of the Complaint.

29. Defendants admit that on May 24, 2013, Plaintiff applied for Family Medical Leave Act ("FMLA") leave and asserted a claim for a serious health condition affecting her child. Defendants admit that on May 28, 2013, Plaintiff applied for FMLA leave and asserted a

claim for her own serious health condition. Except as expressly admitted herein, Defendants deny the allegations contained in paragraph 29 of the Complaint.

30. Defendants admit that Plaintiff's claim for intermittent FMLA leave for her own serious health condition was conditionally certified, and that Plaintiff's claim for intermittent FMLA leave for a serious health condition affecting her child was denied because Plaintiff failed to submit the requisite medical certification. Except as expressly admitted herein, Defendants deny the allegations contained in paragraph 30 of the Complaint.

31. Defendants admit that Plaintiff's employment was terminated on July 26, 2013 and that the termination occurred in the conference room at Keystone PSC. Except as expressly admitted herein, Defendants deny the allegations contained in paragraph 31 of the Complaint.

Defendants deny the unnumbered allegations contained in the sentence immediately after Paragraph 31 and before the "Causes of Action" section of the Complaint.

CAUSES OF ACTION

ALLEGED DISCRIMINATION PURSUANT TO 42 U.S.C. §1981 AND TITLE VII

32. Defendants' answers to paragraphs 1 through 31 of the Complaint are realleged and incorporated by reference.

33. Defendants deny the allegations contained in paragraph 33 of the Complaint.

34. Defendants deny the allegations contained in paragraph 34 of the Complaint.

35. Defendants deny the allegations contained in paragraph 35 of the Complaint.

36. Defendants deny the allegations contained in paragraph 36 of the Complaint.

JURY DEMAND

18. The allegations contained in the incorrectly numbered paragraph 18 of the Complaint pertain to Plaintiff's request for a jury trial and do not require a response. To the extent a response is required, Defendants deny the allegations.

DAMAGES

19. Defendants deny the allegations contained in the incorrectly numbered paragraph 19 of the Complaint.

20. Defendants deny the allegations contained in the incorrectly numbered paragraph 20 of the Complaint.

21. Defendants deny the allegations contained in the incorrectly numbered paragraph 21 of the Complaint.

22. Defendants deny the allegations contained in the incorrectly numbered paragraph 22 of the Complaint.

PRAYER

Defendants deny the appropriateness or permissibility of the relief sought in the "Prayer" section, including subsections (a) through (i), of the Complaint.

FIRST AFFIRMATIVE DEFENSE

Plaintiff's Complaint should be dismissed, in whole or in part, to the extent it fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

To the extent that Plaintiff has failed to comply with all administrative or statutory prerequisites of Title VII, Plaintiff's Title VII claims are barred.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's Title VII claims are barred, in whole or in part, to the extent they exceed the scope of or are inconsistent with the charge(s) of discrimination Plaintiff filed with the EEOC.

FOURTH AFFIRMATIVE DEFENSE

All events which occurred more than one hundred eighty (180) days prior to the filing of Plaintiff's charge(s) of discrimination are untimely and are not properly assertable in this action;

nor is Plaintiff entitled to relief in this action for any events which occurred more than one hundred eighty (180) days prior to the EEOC charge(s).

FIFTH AFFIRMATIVE DEFENSE

The conduct alleged by Plaintiffs was not sufficiently severe or pervasive to constitute harassment as a matter of law.

SIXTH AFFIRMATIVE DEFE

To the extent it may be found that Plaintiff was subjected to any purported harassment, which Defendants deny, Defendants are not liable for such conduct because it exercised reasonable care to prevent and promptly correct such conduct. Furthermore, Plaintiff unreasonably failed to take advantage of the preventive or corrective opportunities provided or to avoid harm otherwise.

SEVENTH AFFIRMATIVE DEFENSE

Any and all actions taken by Defendants with regard to Plaintiff were based solely on legitimate, business-related, non-discriminatory, non-retaliatory reasons and were not contrary to any public policy or unlawful.

EIGHTH AFFIRMATIVE DEFENSE

The business and employment practices of Defendants are now, and were at all relevant times, conducted in accordance with any and all applicable local, state and federal laws and regulations.

NINTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the equitable doctrines of waiver, estoppel, laches and/or unclean hands.

TENTH AFFIRMATIVE DEFENSE

To the extent after-acquired evidence exists of wrongdoing by Plaintiff, she is barred from recovering any back pay for any period after the date of discovery of such evidence.

ELEVENTH AFFIRMATIVE DEFENSE

To the extent it may be found that Plaintiff was subjected to any of the discriminatory, harassing or retaliatory conduct alleged in the Complaint, which is vehemently denied, such conduct was contrary to Defendants' good faith efforts to comply with applicable law. Consequently, Plaintiff's claim for punitive damages is barred.

TWELFTH AFFIRMATIVE DEFENSE

Defendants state that punitive damages are unconstitutional on the grounds that an award of punitive damages would contravene the provisions of the Constitution of the United States. Defendants specifically incorporate by reference all standards or limitations regarding the determination and enforceability of punitive damage awards which arose in the decisions of *BMW of North America v. Gore*, 517 U.S. 559 (1996) and as otherwise provided by law.

THIRTEENTH AFFIRMATIVE DEFENSE

Upon information and belief, Plaintiff had and continues to have the ability to mitigate any alleged damages and, to the extent Plaintiff has failed to mitigate any such damages, Plaintiff is barred from recovering damages in this action.

Defendants hereby reserve the right to assert, and does not waive, any additional or further defenses as may be revealed by additional information acquired during discovery or otherwise and reserves the right to amend this Answer to assert any such defenses.

WHEREFORE, having fully answered Plaintiff's Complaint, Defendants Laboratory Corporation of America and Laboratory Corporation of America respectfully request:

1) That Plaintiff have and recover nothing from Defendants;

2) That Plaintiff's Complaint be dismissed with prejudice;

3) That judgment be entered in favor of Defendants on all of Plaintiff's claims for relief;

4) That the costs of this action be taxed against Plaintiff and that Defendants recover its costs of defending this action, including but not limited to attorneys' fees as allowed by law; and

5) That the Court grant Defendants such further relief as it may deem just and proper.

This the 12th day of June, 2014.

/s/ Jennifer H. Dupuy

Patricia T. Bartis
N.C. State Bar No. 21212
Jennifer H. Dupuy
N.C. State Bar No. 37632
Parker Poe Adams & Bernstein LLP
150 Fayetteville Street, Suite 1400
P. O. Box 389
Raleigh, North Carolina 27601
Tel: (919) 828-0564
Fax: (919) 834-4564
pattibartis@parkerpoe.com
jenniferdupuy@parkerpoe.com

Attorneys for Defendants

CERTIFICATE OF SERVICE

This is to certify that the foregoing **DEFENDANTS' ANSWER TO PLAINTIFF'S COMPLAINT** was electronically filed with the Clerk of the Court using the CM/ECF system and was served via U.S. Mail, first class postage prepaid, addressed as follows:

Keyette Gillam
1136 Lauren McNeil Loop
Fayetteville, North Carolina 28303
Pro Se Plaintiff

This 12th day of June, 2014.

/s/ Jennifer H. Dupuy
Jennifer H. Dupuy
N.C. State Bar No. 37632
Parker Poe Adams & Bernstein LLP
150 Fayetteville Street, Suite 1400
P. O. Box 389
Raleigh, North Carolina 27601
Attorney for Defendants